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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

2011 JAN 12 A 8:55

DOCKETED

JAN 12 2011

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ALL CORP COMMISSIONS
DOCKET CONTROL

DOCKETED BY

QWEST CORPORATION,
COMPLAINANT,

DOCKET NO. T-01051B-09-0307
DOCKET NO. T-03267A-09-0307

VS.

MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC., dba PAETEC BUSINESS
SERVICES,

RESPONDENT.

PROCEDURAL ORDER

BY THE COMMISSION:

On June 9, 2009, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Formal Complaint against McLeodUSA Telecommunications Services, Inc. ("McLeod"), asserting that McLeod's Wholesale Service Order Charge violates state and federal law and public policy and should be stricken from McLeod's Tariff because it is discriminatory, anticompetitive, and unjust or unreasonable ("Complaint"). Qwest asserts that McLeod assesses the charge of \$24.24 whenever an Arizona end-user telecommunications customer switches its intrastate telecommunications service provider from McLeod to Qwest and further asserts that McLeod assesses the charge only against Qwest.

On July 1, 2009, McLeod filed an Answer to Qwest's Complaint, denying many of Qwest's factual assertions, denying that Qwest is entitled to the relief requested in its Complaint, and asserting that the Commission should deny Qwest's Complaint.

On July 6, 2009, a Procedural Order was issued that, among other things, required the Commission's Utilities Division ("Staff") to appear and participate at the procedural conference scheduled therein and to lend its expertise in this matter, as it appears to raise policy issues.

On August 7, 2009, a procedural conference was held at the Commission's offices in Phoenix, Arizona. Qwest, McLeod, and Staff appeared through counsel. During the procedural conference,

1 Qwest and McLeod requested that this matter be resolved through the filing of cross Motions for
2 Summary Determination. Qwest and McLeod asserted that parallel cases are pending in Washington,
3 Iowa, and Utah; that the Washington Commission has agreed to resolve the case there through such
4 Motions; and that it would be preferable not to expend the resources for a hearing. Staff did not
5 object to the proposed process, but expressed a desire for notice to be filed in this docket if a hearing
6 is ordered in a parallel case. Qwest agreed to make such a filing.

7 On August 10, 2009, a Procedural Order was issued establishing a procedural schedule in this
8 matter and establishing requirements for the format and substance of the Qwest and McLeod filings.
9 The first filing required under the Procedural Order was a joint Stipulation of Material Facts, to be
10 made by November 18, 2009.

11 On November 10, 2009, Qwest and McLeod filed a Joint Motion for Modification of
12 Procedural Schedule requesting that the procedural schedule in this matter be modified to require
13 filing of the Stipulation by January 15, 2010, with the other filings to follow at the same intervals as
14 previously established. Qwest and McLeod asserted that the modification of the schedule would
15 allow for the parallel Washington Commission proceeding to be fully submitted. Qwest and McLeod
16 stated that they had consulted with counsel for Staff, who did not object to their request.

17 On November 12, 2009, a Procedural Order was issued modifying the procedural schedule for
18 this matter to require filing of the joint Stipulation by January 15, 2010, and adjust the other filing
19 requirements accordingly. The Procedural Order retained the previously established requirements for
20 the format and substance of Qwest's and McLeod's filings.

21 On January 15, 2010, Qwest filed a Motion for Extension of Time to File Stipulation of
22 Material Facts, on behalf of itself and McLeod, requesting that the deadline for filing the Stipulation
23 be extended to January 25, 2010. Qwest asserted that the parties needed additional time due to
24 unanticipated difficulty in reaching agreement as well as other commitments of counsel. No assertion
25 was made regarding Staff's position on the Motion. Nor was any update provided regarding the
26 progress of the parallel proceedings in other jurisdictions.

27 On January 20, 2010, a Procedural Order was issued extending to February 1, 2010, the filing
28 deadline for the joint Stipulation of Material Facts and scheduling a procedural conference for

February 17, 2010, to discuss the status of the parallel proceedings in other jurisdictions and how best to proceed in this matter.

On February 1, 2010, a joint Stipulation of Material Facts was filed by the parties.

On February 17, 2010, a procedural conference was held at which Qwest, McLeod, and Staff appeared through counsel. The parties revealed that a decision was expected imminently in Washington, that the schedule in Iowa was suspended, that there was not yet a procedural schedule in New Mexico, and that replies to Cross Motions for Summary Determination were the next step in Utah. The parties agreed that the procedural schedule in this matter should be suspended, pending receipt of a Washington order, which Qwest and McLeod hoped would result in their resolving their dispute.

On August 18, 2010, Qwest filed notice of the decision issued in the parallel proceeding before the Public Service Commission of Utah. Qwest subsequently filed a copy of the Utah decision on September 13, 2010.

No additional filings have been made in this matter.

In light of the decision issued in Utah, and the possibility that other decisions may have been forthcoming in the meantime, it is appropriate to schedule a procedural conference in this matter so that the Commission can be updated on the status of the parallel proceedings in other states and on Qwest and McLeod's progress in settling their dispute.

IT IS THEREFORE ORDERED that a **procedural conference** shall be held in this matter on **February 10, 2011, at 10:00 a.m.**, or as soon thereafter as is practicable, in **Hearing Room #1** at the Commission's offices, 1200 West Washington, Phoenix, Arizona 85007.

IT IS FURTHER ORDERED that **Staff shall appear and participate** at the procedural conference scheduled herein.

IT IS FURTHER ORDERED that **Qwest and McLeod each shall be prepared at the procedural conference to report on the status of the parallel proceedings in other states and on any progress toward settlement of their dispute.**

IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona

Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled for discussion, unless counsel has previously been granted permission to withdraw by the Administrative Law Judge or the Commission.

IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized Communications) applies to this proceeding and shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 12th day of January, 2011.


SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered
this 12th day of January, 2011, to:

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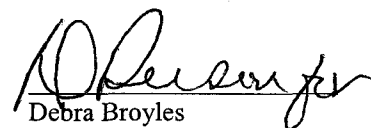
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By: 
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